

§ 906.13

hearing, no further submissions or argument will be accepted into the NAO case record.

(b) NAO in its discretion may reopen the evidentiary portion of the NAO case record or request additional information from the parties at any time prior to final agency action.

§ 906.13 Failure to appear.

If any party fails to appear at a pre-hearing conference or hearing after proper notice, an appellate officer may:

(a) Dismiss the case, or;

(b) Deem the failure of a party to appear after proper notice a waiver of any right to a hearing and consent to the making of a decision based on the NAO case record.

§ 906.14 Burden of proof.

On issues of fact, the appellant bears the burden of proving he or she should prevail by a preponderance of the evidence. Preponderance of the evidence is the relevant evidence in the NAO case record, considered as a whole, that shows that a contested fact is more likely to be true than not true. Appellant has the obligation to obtain and present evidence to support the claims in his or her petition.

§ 906.15 Decisions.

(a) After an appellate officer closes the evidentiary portion of the NAO case record, NAO will issue a written decision that is based on the NAO case record. In making a decision, NAO shall determine whether the appellant has shown by a preponderance of the evidence that the initial administrative determination is inconsistent with the law and regulations governing the initial administrative determination. In making a decision, NAO shall give deference to the reasonable interpretation(s) of applicable ambiguous laws and regulations made by the office issuing the initial administrative determination.

(b) NAO shall serve a copy of its decision upon the appellant and the Regional Administrator. NAO will not provide the case record to the Regional Administrator when issuing its decision.

15 CFR Ch. IX (1–1–16 Edition)

§ 906.16 Reconsideration.

(a) Any party may file a motion for reconsideration of an NAO decision issued under § 906.15. The request must be filed with NAO within 10 days after service of NAO's decision. A party shall not file more than one motion for reconsideration of an NAO decision.

(b) The motion must be in writing and contain a detailed statement of an error of fact or law material to the decision. The process of reconsideration is not a forum for reiterating the appellant's objections to the initial administrative determination.

(c) Arguments not raised by a party in his or her motion for reconsideration of a decision will be deemed waived.

(d) In response to a motion for reconsideration, NAO will either:

(1) Reject the motion because it does not meet the criteria of paragraph (a) or (b) of this section; or

(2) Issue a revised decision and serve a copy of its revised decision upon the appellant and the Regional Administrator.

(e) At any time prior to notifying the Regional Administrator pursuant to § 906.17(a), the NAO may issue a revised decision to make corrections and serve a copy of its revised decision upon the appellant and the Regional Administrator.

§ 906.17 Review by the Regional Administrator.

(a) If NAO does not receive a timely motion for reconsideration pursuant to § 906.16(a), receives a timely motion and rejects it pursuant to § 906.16(d)(1), or issues a revised decision pursuant to § 906.16(d)(2) or (e), NAO will notify the Regional Administrator and the appellant, and provide a copy of the case record for its decision or revised decision to the Regional Administrator.

(b) In reviewing NAO's findings of fact, the Regional Administrator may only consider the evidentiary record including arguments, claims, evidence of record and other documents of record that were before NAO when it rendered its decision or revised decision.

(c) The Regional Administrator may take the following action within 30 days of service of NAO's notification